

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL SURETY COMPANY, a Corpora-
tion,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington,
Northern Division.

FILED

JUN 21 1928

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL SURETY COMPANY, a Corpora-
tion,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington,
Northern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Assignments of Error.....	12
Bill of Exceptions.....	15
Certificate of Clerk U. S. District Court to Transcript of Record.....	28
Citation on Appeal.....	30
EXHIBITS:	
Government's Exhibit 1—Final Recogniz- ance of Defendant.....	19
Respondent's Exhibit "A-1"—Information in Cause No. 9548.....	20
Judgment	8
Names and Addresses of Counsel.....	1
Notice of Appeal.....	11
Order Extending Time to and Including June 11, 1927, to File Bill of Exceptions.....	15
Praecept for Transcript of Record.....	27
Return to Writ of Scire Facias.....	4
Supersedeas and Cost Bond on Appeal.....	13
Waiver of Jury.....	8
Writ of Scire Facias.....	1

NAMES AND ADDRESSES OF COUNSEL.

Messrs. CALDWELL & LYCETTE, Attorneys for
Appellant,

1311 Alaska Building, Seattle, Washington.

THOMAS P. REVELLE, Esquire, Attorney for
Appellee,

305 Federal Building, Seattle, Wash-
ton.

PAUL D. COLES, Esquire, Attorney for Appellee,

315 Federal Building, Seattle, Wash-
ton. [1*]

United States District Court, Western District of
Washington, Northern Division.

No. 9548.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LARRY H. BURNS,

Defendant.

WRIT OF SCIRE FACIAS.

President of the United States of America, to the
Marshal of the Western District of Wash-
ington:

WHEREAS, heretofore, to wit, on the 5th day of

*Page-number appearing at the foot of page of original certified
Transcript of Record.

February, 1925, a recognizance and surety bond in the sum of Seven Hundred Fifty Dollars (\$750.00) was executed by the defendant Larry H. Burns, as principal, and the National Surety Company, as surety, which said recognizance and surety bond was conditioned for the appearance of the said defendant Larry H. Burns before the United States District Court for the Western District of Washington, Northern Division, at the courthouse in the city of Seattle, during the May, 1925, term of said District Court, and from time to time, and term to term, thereafter, to answer a charge of the United States of America exhibited against the said defendant, and not to depart out of the jurisdiction of the Court without leave; and that thereafter, on the 10th day of February, 1925, the said recognizance for appearance before the said District Court, and property bond was filed in said court with the Clerk thereof.

AND, WHEREAS, thereafter, to wit, on the 8th day of September, 1925, and at a proper term of said court, the said defendant Larry H. Burns, being called to come into court [2] and answer said charge, came not, but made default, whereupon, on motion of United States District Attorney, it was considered by the Court that for the default aforesaid, the said defendant Larry H. Burns, as principal, and the National Surety Company, as surety, forfeit and pay to the United States of America the sum of Seven Hundred Fifty Dollars (\$750.00) according to the tenor and effect of said recognizance and surety bond now in the hands of the

Clerk of said court, unless they appear at the next term of said court, and show sufficient cause to the contrary.

YOU ARE, THEREFORE, HEREBY COMMANDED, to make known the contents of this writ to the said defendant Larry H. BURNS and said National Surety Company, and summon them to appear before said District Court of the United States, at a court to be held before the Western District of Washington, Northern Division, at the courthouse in Seattle, on the 15 day of November, 1926, and to show cause, if any they have, why judgment *nisi* aforesaid should not be made absolute; and further, to show cause why they ought not to have execution issue against them for the respective amounts due to the United States of America, upon said surety bond, under the judgment aforesaid, together with any costs which may accrue by reason of proceedings to be had in the enforcement of said judgment, as by law provided.

HEREIN FAIL NOT.

WITNESS, the Hon. EDWARD E. CUSHMAN, Judge of the United States District Court, at Seattle, in said District on the 18 day of October, 1926.

[Seal]

ED. M. LAKIN,

Clerk of the District Court of the United States for the Western District of Washington.

By T. W. Egger,

Deputy Clerk, U. S. District Court, Western District of Washington. [3]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed scire facias on the therein named National Surety Co., by handing to and leaving a true and correct copy thereof with G. L. Stevick, Atty. and Supt., personally, at Seattle, in said District, on the 18th day of Oct., A. D. 1926.

E. B. BENN,

U. S. Marshal.

By J. E. Williams,

Deputy.

Western District of Washington,—ss.

I hereby certify and return, that on the 18th day of Oct., 1926, I received the within scire facias and that after diligent search I am unable to find the within named defendants Larry H. Burns within my district.

E. B. BENN,

United States Marshal.

By J. E. Williams,

Deputy United States Marshal.

[Endorsed]: Filed Oct. 21, 1926. [4]

[Title of Court and Cause.]

RETURN TO WRIT OF SCIRE FACIAS.

Comes now the National Surety Company, surety on the bond of Larry H. Burns, defendant herein,

and making answer and return to the writ of scire facias heretofore issued herein, admits, denies and alleges as follows, to wit:

I.

Said surety denies that the said recognizance and surety bond was conditioned for the appearance of said defendant before said District Court during the May, 1925, term of said court and from time to time and term to term thereafter.

II.

Said surety denies that on the 8th day of September, 1925, and at a proper *time* of said court, said Larry H. Burns was called to come into court and answer said charge, and denies that said Larry H. Burns was called at any proper time; and denies that said surety or said Larry H. Burns made any default under said bond.

For further return and answer to said writ of scire facias, and as a first affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That no charge was filed against said defendant, Larry H. Burns until May 15, 1925, which was three months after [5] the date on which said defendant was bound by said bond to appear, and was in the next term of court after the term in which said defendant was by his bond bound to appear.

For further return and answer to said writ of scire facias, and as a second affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That the charge for which said defendant was bound by his said bond to appear was the charge of having "on or about November 21, having violated the National Prohibition Act," while the charge which was filed against said defendant was the charge of having "on October 4, October 16, October 24, October 31 and November 8, violated the National Prohibition Act," none of which alleged violations were on or about November 21, as provided for in said bond.

For further return and answer to said writ of scire facias, and as a third affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That on May 26, 1925, said defendant appeared in said court and plead guilty to two of the counts filed against him, and thereby fulfilled the condition of his said bond.

For further return and answer to said writ of scire facias, and as a fourth affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That the appearance required by the condition of said bond was an appearance in the November, 1924, term, and not the May, 1925, term of said Court.

WHEREFORE, having made its return to the writ of scire facias issued herein, and having fully answered the same and having shown cause why the judgment *nisi* aforesaid should [6] not be

made absolute and why execution should not issue against the National Surety Company for the amount claimed in said writ of scire facias, the National Surety Company prays that judgment absolute be not rendered against it, and that it be relieved from any and all liability under said bond, and from any and all costs accruing thereunder and that said writ of scire facias be discharged.

HUGH M. CALDWELL,
JOHN P. LYCETTE,

Attorneys for the National Surety Company.

United States of America,
Western District of Washington,
Northern Division,—ss.

John P. Lycette, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the National Surety Company, a corporation, and makes this verification for and on behalf of said National Surety Company for the reason that it is a foreign corporation and that there is no officer thereof within the State of Washington upon whom service of process may be had; that he has read the foregoing return to writ of scire facias, knows the contents thereof and believes the same to be true.

JOHN P. LYCETTE.

Subscribed and sworn to before me this 15th day of November, 1926.

[Seal] W. H. SUTTON,
Notary Public in and for the State of Washington,
Residing in Seattle.

[Endorsed]: Filed Nov. 15, 1926. [7]

[Title of Court and Cause.]

WAIVER OF JURY.

Comes now the National Surety Company, and waives any right it might have to a jury trial herein.

NATIONAL SURETY COMPANY.

By CALDWELL & LYCETTE,

Its Attys.

O. K.—PAUL D. COLES,

Asst. District Attorney.

[Endorsed]: Filed Jun. 13, 1927. [8]

United States District Court, Western District of
Washington, Northern Division.

No. 9548.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LARRY H. BURNS,

Defendant.

JUDGMENT.

It appearing to the Court from the records and files herein and from the evidence adduced that on the 8th day of September, 1925, the above-named defendant Larry H. Burns was duly called into this court to answer to the information heretofore filed against him charging him with violation of Sections 3 and 21, National Prohibition Act, and that when

so called the said defendant Larry H. Burns, defaulted and failed to appear, and that he was duly and regularly summoned from the door of said courtroom three times to appear and answer to said information, and again failed to appear; and that thereafter on, to wit, the 8th day of September, 1925, the recognizance and surety bond which was executed by the said defendant, Larry H. Burns, in the sum of \$750.00, which said recognizance and surety bond was conditioned for the appearance of the said defendant Larry H. Burns, before the United States District Court for the Western District of Washington, Northern Division, at the courthouse in the City of Seattle, at the next term, to wit, Nov., 1925, term, of said District Court, and from time to time and from term to term thereafter, was upon motion of the United States Attorney duly forfeited and judgment *nisi* thereupon entered defaulting said recognizance and sureties upon said surety bond.

That thereafter on the 18th day of October, 1926, a writ of scire facias was duly issued out of this court commanding the said Larry H. Burns as principal, and National Surety Company as surety, [9] to appear before this Court on the 15th day of November, 1926, to show cause why said judgment *nisi* should not be made absolute, and further, to show cause why they ought not to have execution issue against them, and each of them, for the amount due to the United States of America upon said surety bond under the judgment as aforesaid, together with any costs which may accrue by reason of proceedings to be had in the enforcement of

said judgment as by law provided, and that the said defendant Larry H. Burns could not be found, and that service was effected on said National Surety Company, as surety, and that the said writ has been duly returned into this court by the United States Marshal for said district with his return thereon as aforesaid; and an answer to said writ was regularly filed by the surety company, and on May 10, 1927, the matter was regularly brought on for hearing before the undersigned, one of the Judges of the above-entitled court for the Western District of Washington, the United States appearing by Thomas P. Revelle, United States Attorney, and Paul D. Coles, Assistant United States Attorney, and the National Surety Company appearing by Hugh Caldwell, its attorney; and the Court being fully advised in the premises, it is by the Court

ORDERED AND ADJUDGED that the said judgment *nisi* entered herein on the 8th day of September, 1925, forfeiting said recognizance and declaring that said defendant Larry H. Burns as principal, and National Surety Company as surety, forfeit and pay to the United States of America the sum of Seven Hundred Fifty (\$750.00) Dollars, according to the tenor and effect of said recognizance and surety bond, be made absolute; and it is further

ORDERED that the Clerk of the above court be, and he hereby is authorized and directed to issue writ of execution against the property of said National Surety Company, surety upon said surety

bond, for the sum of Seven Hundred (\$750.00) Dollars, together with all costs which may accrue by reason of proceedings to be had in the enforcement of said judgment, as by law provided.

Done in open court this 9th day of March, 1928, to all of which the deft. surety excepts.

JEREMIAH NETERER,
United States District Judge. [10]

[Endorsed]: Filed Mar. 9, 1928. [11]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the UNITED STATES OF AMERICA, Plaintiff, and to THOS. P. REVELLE, United States Attorney, and PAUL D. COLES and DAVID L. SPAULDING, Assistant United States Attorneys, Its Attorneys:

You, and each of you, will please take notice that the defendant, National Surety Company, in the above-entitled cause, has appealed, and does hereby appeal, to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain judgment entered in the above-entitled court and cause on the 9th day of March, 1928, and from the whole and every part thereof.

Dated this 21st day of April, 1928.

CALDWELL & LYCETTE,
Attorneys for National Surety Company.

[Endorsed]: Filed Apr. 23, 1928.

Copy received this 23 day of April, 1928.

PAUL D. COLES,
Asst. United States Attorney. [12]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Now comes the defendant, National Surety Company, and files the following assignments of error upon which it will rely on its prosecution of the appeal in the above-entitled cause, from the decree made by this Honorable Court on the 13th day of June, 1927.

1. That the United States District Court for the Western District of Washington, Northern Division, erred in refusing to grant the appellant and defendant's motion for a nonsuit.

2. That said Court erred in granting judgment for the plaintiff and respondent.

3. That said Court erred in refusing to grant judgment for the defendant and appellant, dismissing the cause.

WHEREFORE, appellant prays that said judgment be reversed, and that the United States District Court for the Western District of Washington, Northern Division, be ordered to enter a judgment and order reversing said decision in said cause.

CALDWELL & LYCETTE,
Attorneys for Defendant, National Surety Company.

[Endorsed]: Filed Apr. 23, 1928. [13]

[Title of Court and Cause.]

SUPERSEDEAS AND COST BOND ON AP-
PEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, the National Surety Company, a corporation, appellant herein, as principal, and the New York Indemnity Company, a corporation organized under the laws of the State of New York, authorized to transact the business of surety in the State of Washington, and in the District of Washington, as surety, are held and firmly bound unto the United States of America, plaintiff herein, in the full and just sum of Fifteen Hundred (\$1500.00) Dollars, well and truly to be paid, we bind ourselves and our, and each of our, heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of April, 1928.

The condition of this obligation is such, that,

WHEREAS the above-named plaintiff, United States of America, on the 9th day of March, 1927, in the above-entitled court and action, recovered judgment against the defendant above named in the sum of Seven Hundred Fifty (\$750.00) Dollars; and

WHEREAS, the above-named principal, National Surety Company, a corporation, has heretofore given due and proper notice that it appeals from said decision and judgment of said District

Court, to the United States Circuit Court of Appeals for the Ninth [14] Circuit;

Now, Therefore, if the said principal, the National Surety Company, a corporation, shall pay to said plaintiff and respondent, the United States of America, all costs and damages that may be awarded against said National Surety Company, a corporation, on said appeal, and shall prosecute its said appeal to effect, and answer all costs if it fail to make good its plea, and shall satisfy and perform the judgment and order appealed from, in case it shall be affirmed, and shall satisfy and perform any judgment or order which the said United States Circuit Court of Appeals for the Ninth Circuit may render or make, or order to be rendered or made by said United States District Court for the Western District of Washington, Northern Division, then this obligation to be void; otherwise to remain in full force and effect.

NATIONAL SURETY COMPANY.

[Seal]

By JOHN P. LYCETTE,

Its Atty.

NEW YORK INDEMNITY COMPANY.

[Seal]

By J. GRANT.

The above supersedeas and cost bond on appeal is hereby approved as to form and amount.

JEREMIAH NETERER,
United States District Judge.

O. K.—Form and substance.

PAUL D. COLES,
Asst. U. S. Atty.

[Endorsed]: Filed Apr. 23, 1928. [15]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING JUNE 11, 1927, TO FILE BILL OF EXCEPTIONS.

This matter having come on regularly for hearing on the motion of the National Surety Company for an order extending the time for filing a bill of exceptions in the above-entitled matter, until Saturday, June 11th; and it appearing that there is no objection thereto,—

NOW, THEREFORE, IT IS HEREBY ORDERED that the time for filing a proposed bill of exceptions in this cause be, and the same is hereby extended to and including Saturday, June 11th, 1927.

Done in open court this 8th day of June, 1927.

JEREMIAH NETERER.

PAUL D. COLES,
Asst. U. S. Attorney.

[Endorsed]: Filed Jun. 8, 1927. [16]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that heretofore, to wit, on the 13th day of June, 1927, this cause came on regularly for trial before the Honorable Jeremiah Neterer, one of the Judges of the above court, sitting without a jury, a written waiver of trial by

jury having been filed as required by law; the plaintiff appearing by Thos. P. Revelle and Paul D. Coles, its attorneys, and the National Surety Company appearing by Hugh M. Caldwell and John P. Lycette, its attorneys, and the defendant Larry H. Burns not appearing;

Thereupon the following proceedings were had and testimony taken, to wit:

The Government stated that it was ready to go to trial and made a motion to amend the writ changing the words "November term" to "May term"; motion was allowed.

The Government offered in evidence Exhibit 1, which was the bond, which was in the Commissioner's transcript. It was stipulated that the bond was filed on the date it bears, was in the sum of \$750.00, and that the same had not been paid. It was denied that the defendant was requested to appear in court on the 8th day of September, 1925. [17] Thereupon the Government offered in evidence lines from page 405, showing that on May 26th the defendant Burns revised his plea of guilty to counts one and two; all other counts were dismissed; that on May 26th an order was entered by the Court setting date of June 1st, 1925, for judgment and sentence. On June 1st, on Burns' assent, it was continued one week. On June 8th an order was entered putting over sentence to September 1, 1925; it does not appear at whose request. Judgment was put over until that time, and on September 1st the Court entered an order putting judgment and sentence over one week; on

September 8th, continuance of sentence was denied, and bail forfeited *nisi* and bench warrant issued for Burns. The records, from p. 405, lines six to fifteen, containing the evidence and entries above quoted, were offered without objection and admitted. Thereupon the bond was admitted. The Government rested.

Thereupon defendant made a motion for non-suit on the ground that the Government's evidence does not justify making the judgment absolute, and its evidence shows affirmatively that the Government is not entitled to judgment absolute. The Court then stated that it had not been shown that the defendant had been called. The Government then offered page 493 of the journal entries of the District Court, under date of September 8th, 1925, case of United States vs. Larry H. Burns, cause No. 9548, order forfeiting bail, reading as follows: "Now on this 8th day of September, 1925, the above defendant is called for sentence and not responding is called three times in the corridor of the court. Not responding, bail is forfeited *nisi* and bench warrant issued." Thereupon the Government rested.

Defendant thereupon renewed its motion for non-suit, which was denied. Defendant then offered additional evidence that the criminal docket shows the information was filed May 5, 1925. The criminal complaint in the action was offered in evidence and [18] was admitted by the Court.

Defendant thereupon rested; and the Government had no rebuttal.

Thereupon argument; defendant called the Court's attention to the fact that the information was not filed during the term for which the bond was given, nor was the defendant called in that term; that the charge was indefinite; that the defendant appeared and pleaded, and his sentence was continued so many times as to enlarge the obligation of the bond.

The Court took the matter under advisement on the ground that no charge was filed during the term in which the bond was given. Thereafter the Court entered judgment for the plaintiff, and the forfeiture was made absolute; to which an exception was taken and allowed.

This bill of exceptions contains in substance all the testimony offered in this case.

The National Surety Company prays that this, its bill of exceptions, may be allowed, settled and signed.

CALDWELL & LYCETTE,
Attorneys for National Surety Company.

Settled and allowed this 26 day of Sept., 1927.

JEREMIAH NETERER,
District Judge.

Copy of bill of exceptions received this 11 day of June, 1927.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Endorsed]: Lodged Jun. 11, 1927. [19]

9548.

GOVERNMENT'S EXHIBIT 1—ADMITTED.

FINAL RECOGNIZANCE OF DEFENDANT.

United States of America,
—— District of ——,
Northern Division,—ss.

BE IT REMEMBERED, that on this 5th day of February, A. D. 1925, before me, as United States Commissioner for the said Western District of Washington, Northern Division, personally came Larry Burns, principal, and National Surety Co., sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of Seven Hundred Fifty (\$750.00) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

THE CONDITION of this recognizance is such, that if the said Larry Burns, principal, shall personally appear before the District Court of the United States in and for the Western District of Washington, on the —— day of the November term, to be begun and held at the City of Seattle, Wn., in said District, on the 9th day of February, 1925, and from time to time thereafter to which the case may be continued and then and there answer the charge of having, on or about the 21st day of November, A. D. 1924, within said District, in violation of Section —— of the N. P. A. (Act of ——) (Criminal Code) (Revised Statutes) of the United States, unlawfully, knowingly and wilfully maintain a common nuisance; and have,

possess and sell certain intoxicating liquor, and then and there abide the judgment of the said Court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

LARRY BURNS. [Seal]

NATIONAL SURETY COMPANY.

[Seal] By C. B. WHITE,
Attorney-in-fact.

Taken and acknowledged before me on the day and year first above written.

[Seal] A. C. BOWMAN,
United States Commissioner as Aforesaid. [20]

[Endorsed]: Part of Commissioner's Transcript.
Court No. 2973. Filed Feb. 10, 1925. [21]

9548.

RESPONDENT'S EXHIBIT "A-1" ON RE-
TURN TO WRIT OF SCIRE FACIAS—
ADMITTED.

(Wash. 2397)

(Comm'r No. 2973—Bail \$750 each.)

United States District Court, Western District of
Washington, Northern Division.

May, 1925, Term.

No. 9548.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE BORG, L. H. BURNS, and JESSE DONO-
VAN, *alias* J. F. DONOVAN, *alias* JESS
F. O'CONNELL,

Defendants.

INFORMATION.

BE IT REMEMBERED, that Thos. P. Revelle, Attorney of the United States of America for the Western District of Washington, who for the said United States in this behalf prosecutes in his own person, comes here unto the District Court of the said United States for the District aforesaid on this 5 day of May, in this same term, and for the said United States gives the Court here to understand and be informed that,— [22]

COUNT I.

That on the fourth day of October, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, JOE BORG, L. H. BURNS, and JESSE DONOVAN, *alias* J. F. DONOVAN, *alias* JESS F. O'CONNELL (whose true and full names are to the said United States Attorney unknown), then and there being, did then and there knowingly, willfully, and unlawfully sell certain intoxicating liquor, to wit, eight (8) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said sale by the said Joe Borg, L. H. Burns, and Jesse Donovan, as aforesaid, was then and there unlawful and prohibited by the Act

of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [23]

And the said United States Attorney for the said Western District of Washington further informs the Court:

COUNT II.

That on the sixteenth day of October, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, JOE BORG, L. H. BURNS, and JESSE DONOVAN, *alias* J. F. DONOVAN, *alias* JESS F. O'CONNELL (whose true and full names are to the said United States Attorney unknown), then and there being, did then and there knowingly, willfully, and unlawfully sell certain intoxicating liquor, to wit, eight (8) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said sale by the said Joe Borg, L. H. Burns, and Jesse Donovan, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and

against the peace and dignity of the United States of America. [24]

And the said United States Attorney for the said Western District of Washington further informs the Court:

COUNT III.

That on the twenty-fourth day of October, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, JOE BORG, L. H. BURNS, and JESSE DONOVAN, *alias* J. F. DONOVAN, *alias* JESS F. O'CONNELL (whose true and full names are to the said United States Attorney unknown), then and there being, did then and there knowingly, willfully, and unlawfully sell certain intoxicating liquor, to wit, eight (8) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said sale by the said Joe Borg, L. H. Burns, and Jesse Donovan, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [25]

And the said United States Attorney for the said

Western District of Washington further informs the Court:

COUNT IV.

That on the thirty-first day of October, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, JOE BORG, L. H. BURNS, and JESSE DONOVAN, *alias* J. F. DONOVAN, *alias* JESS F. O'CONNELL (whose true and full names are to the said United States Attorney unknown), then and there being, did then and there knowingly, willfully, and unlawfully have and possess certain intoxicating liquor, to wit, sixteen (16) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, intended then and there by the said Joe Borg, L. H. Burns, and Jesse Donovan, for use in violating the Act of Congress passed October 28, 1919, known as the National Prohibition Act, by selling, bartering, exchanging, giving away, and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said Joe Borg, L. H. Burns, and Jesse Donovan, as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case

made and provided and against the peace and dignity of the United States of America. [26]

And the said United States Attorney for the said Western District of Washington further informs the Court:

COUNT V.

That prior to the commission by the said JESSE DONOVAN, *alias* J. F. DONOVAN, *alias* JESSE F. O'CONNELL, of the said offense of possessing intoxicating liquor herein set forth and described in the manner and form as aforesaid, said JESSE DONOVAN, *alias* J. F. DONOVAN, *alias* JESS F. O'CONNELL, on the 12th day of September, 1922, in cause No. 6986 at Seattle, in the United States District Court for the Western District of Washington, Northern Division, was duly and regularly convicted of the offense of possessing intoxicating liquor on the 19th day of June, 1922, in violation of the said Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [27]

And the said United States Attorney for the said Western District of Washington further informs the Court:

COUNT VI.

That on the eighth day of November, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, JOE BORG,

L. H. BURNS, and JESSE DONOVAN, *alias* J. F. DONOVAN, *alias* JESS F. O'CONNELL (whose true and full names are to the said United States Attorney unknown), then and there being, did then and there knowingly, willfully, and unlawfully sell certain intoxicating liquor, to wit, eight (8) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said sale by the said Joe Borg, L. H. Burns, and Jesse Donovan, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [28]

And the said United States Attorney for the said Western District of Washington further informs the Court:

COUNT VII.

That from the fourth day of October, to the eighth day of November, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, and at a certain place situated at 1510-12th Avenue, in the said City of Seattle, JOE BORG, L. H. BURNS, and JESSE

DONOVAN, *alias* J. F. DONOVAN, *alias* JESS F. O'CONNELL (whose true and full names are to the said United States Attorney unknown), then and there being, did then and there and therein knowingly, willfully, and unlawfully conduct and maintain a common nuisance by then and there manufacturing, keeping, selling, and bartering intoxicating liquors, to wit, distilled spirits, and other intoxicating liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, and which said maintaining of such nuisance by the said Joe Borg, L. H. Burns, and Jesse Donovan, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,
United States Attorney.

J. W. HOAR,
Assistant United States Attorney.

[Endorsed]: Filed May 5; 1925. [29]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare record on appeal consisting of

1. Writ of scire facias.
2. Return to writ of scire facias.
3. Bill of exceptions with exhibits attached thereto.
4. Order extending time for filing bill of exceptions.
5. Judgment.
6. Assignments of error.
7. Notice of appeal.
8. Citation on appeal.
9. Waiver of jury.
10. Supersedeas bond on appeal.
11. This praecipe.

CALDWELL & LYCETTE,
Attorneys for Appellant.

NOTICE.

Attorneys will please indorse their own filings,
Rule 11.

[Endorsed]: Filed May 12, 1928. [30]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 30, inclusive, to be a full, true, correct and complete

copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, at Seattle, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [31]

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 62 folios, at 15¢	\$9.30
Certificate of Clerk to Transcript of Record, with seal50
<hr/>	
Total.....	\$9.80

I hereby certify that the above cost for preparing and certifying record, amounting to \$9.80, has been paid to me by the attorney for appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court,

at Seattle, in said District, this 17th day of May,
A. D. 1928.

[Seal] ED. M. LAKIN,
Clerk United States District Court, Western Dis-
trict of Washington.

By S. E. Leitch,
Deputy. [32]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

To the UNITED STATES OF AMERICA, Plain-
tiff, and to THOS. P. REVELLE, PAUL D.
COLES and DAVID L. SPALDING, Its At-
torneys:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, to be held at the City of San Francisco, State of California, in the Ninth Judicial Circuit, on the 23d day of May, 1928, pursuant to a notice of appeal filed in the office of the Clerk of the above-entitled District Court, appealing from the final judgment signed and filed herein on the 9th day of March, 1927, wherein the United States of America is plaintiff and the National Surety Company, a corporation, is defendant and appellant; to show cause, if any there be, why the judgment rendered against the said appellant as in said notice of appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, United States District Judge for the Western District of Washington, Northern Division, this 23 day of April, 1928.

[Seal]

JEREMIAH NETERER,
United States District Judge.

Copy received.

PAUL D. COLES,
Asst. U. S. Atty.

[Endorsed]: Filed Apr. 23, 1928. [33]

[Endorsed]: No. 5497. United States Circuit Court of Appeals for the Ninth Circuit. National Surety Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed May 21, 1928.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

